

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

In Re:

TOMMY WAYNE CAMPBELL

Case no.: 15-03987-RM3-7

Debtor

City Auto Finance, LLC

Plaintiff

vs.

Adversarial Case No.:

Tommy Campbell individually and DBA

Lakeview Cycles, Inc.

Defendant

**COMPLAINT TO DECLARE CERTAIN DEBTS NONDISCHARGEABLE
AND FOR JUDGMENT**

COMES now the Plaintiff, City Auto Finance, LLC (“CAF”), by and through undersigned Counsel and for its Complaint to declare certain debts nondischargeable and for judgment, and in support of same asserts as follows:

I. JURISDICTION

Jurisdiction is properly before this court pursuant to 28 U.S.C. §1334 and 28 U.S.C. §1471. This is a core proceeding

II. PARTIES

1. City Auto Finance, LLC (“CAF”) is a Tennessee Corporation with its principle place of business in Shelby County, Tennessee.
2. Defendant Tommy Campbell may be served with process at 2205 Woodcliff Drive, Smyrna, Tennessee 37167 .
3. Defendant Lakeview Cycles, Inc. is an administratively dissolved corporation doing

business at 101 Gils Street, Smyrna Tennessee 37167 and may be served through its former registered agent, Tommy Campbell.

4. On or about December 5th, 2012, Defendants entered into a Demand Promissory Note and Security Agreement as well as Personal Guaranty (the "Agreement") in which CAF agreed to lend monies to Defendants for the purpose of Defendants operating a motor vehicle sales business and Defendants agreed, among other things, to repay those monies, plus interest and other charges, upon demand.

5. On or about June 10, 2015, the debtor filed the instant chapter 7 petition. CAF was never served with notice of this bankruptcy and it was not until August 26, 2015, upon receiving docket entry number 25 from the trustee, that CAF was aware that debtor was seeking bankruptcy protection.

FACTS

6. The terms and conditions and an exact copy of the Agreement is attached hereto as Exhibit "A".

7. After extending sums of money to Defendants, the Defendants failed to fulfill their obligations pursuant to same and are therefore in breach. They have failed to make payments since June, 2013.

8. After giving all due credit for monies received by Defendants and through efforts taken to mitigate damages, the principle balance outstanding by Defendants is \$43,928.08 (forty three thousand nine hundred twenty eight dollars and eight cents) as shown by the accounts receivable detail. Attached as Exhibit "B".

9. Pursuant to Paragraph 17 of the Agreement Defendants agree to pay CAF's attorney's fees.

10. Demand for payment has been made and refused.

11. Defendants are in default under the Agreement and Personal Guaranty. Pursuant to the Agreement, Defendants were to repay City Auto Finance within ten (10) days of the sale of any vehicle.

12. In the auto lending industry the sale of a vehicle to a third party without prompt payment to the sellers' lender is known as "selling out of trust". Being "out of trust" is a breach of fiduciary duties between a borrower and a lender.

13. As such, the Defendants obtained money from City Auto Finance under false pretenses, a false representation, or actual fraud insofar as they promised to remit monies held in trust from the sale of any vehicle and failed to do so.

14. As shown on the attached accounts receivable detail for Lakeview Cycles, Inc., attached as exhibit B, there are multiple instances where Defendant sold vehicles out of trust. Indeed, defendants sold \$55,380.17 worth of vehicles out of trust. However, plaintiff mitigated its damages.

15. Further, Defendant made numerous material misrepresentations to Plaintiff upon which Plaintiff relied to its detriment. In particular, Defendant told Plaintiff that the vehicles sold "out of trust" were incomplete sales because Defendant had not yet been "funded" by a purchaser's lender. These statements were not true and caused Plaintiff to detrimentally rely upon same in forbearance of legitimate collection efforts.

16. Defendant Tommy Campbell and Lakeview Cycles, Inc. owe CAF an amount not less than \$43,928.08 (forty three thousand nine hundred twenty eight dollars and eight cents) plus attorney's fees and interest.

WHEREFORE PREMISES CONSIDERED: City Auto Finance, LLC prays that:

1. Process be issued;
2. Defendant be made to answer within the time allowed by law;

3. A Judgment in an amount not less than \$43,928.08 (forty three thousand nine hundred twenty eight dollars and eight cents) be awarded against Defendants, jointly, severally and individually;
4. The Court award pre-judgment interest and attorney's fees in accordance with the Agreement; and
5. This Court declare that Defendants obtained money from City Auto Finance under false pretenses or representations; have breached fiduciary obligations by fraud or defalcation and/or committed willful and/or malicious injury to City Auto Finance's property to the extent of \$43,928.08 (forty three thousand nine hundred twenty eight dollars and eight cents) (representing those vehicles sold out of trust);
6. For all other applicable relief

Respectfully Submitted,

/s/ Evan Nahmias
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